

## **REMARKS**

Applicant intends this response to be a complete response to the Examiner's **April 19, 2007** Non-Final Office Action. Applicant has labelled the paragraphs in his response to correspond to the paragraph labelling in the Office Action for the convenience of the Examiner. For convenience a complete list of the claims as presently pending are provided though no amendments are included in conjunction with this response.

### ***Status of the Application***

1. Claims 1-38 have been examined in this application. This Non-Final Office Action follows applicant's RCE and response filed January 31, 2007.

### ***Rejections under 35 USC § 103***

3. **Claims 1-2, 4-12, 14-22, 24-27, 29-34 and 36-38** are rejected under 35 U.S.C. 103(a) as being unpatentable over US Patent Number 6,496,804 to McEvoy in view of US Patent Application Publication 2005/0033639 to Myers and in further view of US Patent Number 5,832,449 to Cunningham (from the applicant's Information Disclosure Statement (IDS)).

4. **Claim 3** stands rejected under 35 U.S.C. 103(a) as being unpatentable over McEvoy in view of Myers and Cunningham as applied to Claim 2 above, and in further view of US Patent Number 5,666,490 to Gillings.

(B) As per claims 23, 28 and 35, these claims repeat features previously addressed in the rejection of claims 1-14 and are rejected on the same basis.

5. **Claim 13** stands rejected under 35 U.S.C. 103(a) as being unpatentable over McEvoy in view of Myers and Cunningham, as applied to Claim 1, above.

Applicant traverses each of the rejections and requests reconsideration.

### ***Argument***

Claim 1 as originally filed reads:

A method for distributing pharmaceutical drug samples, comprising a step of adjudicating a claim by a drug dispenser for the use of a token for a pharmaceutical drug sample at a claim adjudication system for pharmacy benefit claims, the token being distributed by a prescriber to permit the patient to obtain

the pharmaceutical drug sample from the drug dispenser. *[Emphasis added by underlining.]*

Claim 1 is directed to a method for distributing a “pharmaceutical drug sample”. The method step describes a claims adjudication operation that is performed “at a claim adjudication system for pharmacy benefit claims”.

As described in the specification and as would be understood to a person of ordinary skill in the art, the terms “adjudication” “claim” and “benefit” relate to processing insurance benefit claims for (partial or complete) coverage for prescription drug costs to the patient.

Rather than receive a pharmaceutical drug sample directly from their doctor, a patient receives the token to exchange at a pharmacy for the pharmaceutical drug sample. This token is presented at the pharmacy to receive the drug in a similar way that a prescription and the patient’s prescription drug plan pharmacy benefit information is currently presented to fill a typical prescription. The pharmacy uses the token, presenting a claim to the same claim adjudication system for pharmacy benefits (i.e. drug plan benefits) as it would submit its normal claims for prescriptions.

In this way, the sample distribution reimbursement operations, data collection operations and value-added pharmacy services (e.g. as per claim 8, formulary management services and drug utilization review services) can be provided in a manner that exists for prescribed drugs. The patient gets the drug but does not pay for it. The pharmacist gets reimbursed in a trusted manner as exists for the current distribution of drugs under prescription drug insurance plans. Data is collected by a system that already functions to do so. By integrating into the claims adjudication system, numerous technical issues need not be re-solved and few operational changes at the pharmacy are required. Patients also receive drugs that have not traveled through existing sample distribution channels and may receive additional services, particularly drug utilization review services, from the pharmacist that they would not otherwise be able to receive in association with the distribution of the drug sample.

None of the cited art and in particular McEvoy, Myers, Cunningham and Gillings teach or suggest using a claims adjudication system for pharmacy benefits to process a pharmacy’s claim to distribute pharmaceutical drug samples.

The argument above may be applied to each of the claims of the present application and

even though such claims may include additional patentable subject matter, for this reason alone applicant submits all of the claims are allowable.

***Summary***

In sum, Applicant submits that the Examiner's cited references neither alone, nor in combination, disclose the Applicant's invention as presently claimed. For all of the reasons set out above, Applicant respectfully submits that the application in its present form is in condition for allowance and action toward that goal is respectfully requested.

If it would be of assistance in resolving any issues in this application, the Examiner is kindly invited to contact applicant's attorney Jonathan Pollack at 416.862.5405.

Date: July 19, 2007

Respectfully submitted,

/Jonathan Pollack/

Jonathan Pollack

Reg. No. 49,065